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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09 873,468	06 04 2001	John E. Buck	02751-000453	3892

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EXAMINER

VORTMAN, ANATOLY

ART UNIT PAPER NUMBER

2835

DATE MAILED: 04/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/873,468

Applicant(s)

BUCK ET AL.

Examiner

Anatoly Vortman

Art Unit

2835

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b)

## Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-18 and 28-34 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 19, 21, 22 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 5, 7, 8, 20, 23 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 30 May 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6, 19, 21, 22, 24-26, and 35, are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's disclosed Prior Art in view of US/4,721,070 to Tanaka et al., (Tanaka).

Regarding claims 1-4, 6, 19, 21, 22, 24-26, and 35, the Applicant disclosed that generators having control panels including all of the control elements as claimed in the instant application have been known in the art at the time the invention was made (page 1, paragraphs [0002] and [0003] of the instant application), but did not disclose that said control elements have been logically organized into separate control zones.

Tanaka disclosed a portable generator (Fig. 4) having control panel comprising at least two logically organized separate zones (one at the front end of the generator frame and another one on the side of the frame).

Since the Applicant's disclosed Prior Art device and the device of Tanaka are from the same field of endeavor (portable electrical generators) the purpose of the control panel having

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logically organized control elements grouped into different zones taught by Tanaka would be recognized in the Applicant's disclosed Prior Art device.

It would have been obvious to a person of ordinary skill in the control art at the time the invention was made to logically organize the control elements of the Applicant's disclosed Prior Art device into different zones as taught by Tanaka in order to facilitate the control functions of the device.

Alternatively, it would have been obvious to a person of ordinary skill in the control art at the time the invention was made to logically organize control elements of the Applicant's disclosed Prior Art device into different zones, since such a modification would have involved a mere rearranging of the control elements of the Prior Art device. It has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

***Allowable Subject Matter***

3. Claims 9-18 and 28-34 are allowed.
4. Claims 5, 7, 8, 20, 23, and 27, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter:

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regarding claims 9-18 and 28-34, independent claims 9 and 28 recite the limitation "frame member". The aforementioned limitation in combination with remaining limitations of independent claims 9 and 28 is believed to render said independent claims 9 and 28 and subsequently dependent claims 10-18 and 29-34 patentable over the art of record.

Regarding claims 5, 7, 8, 20, 23, and 27, claims 5 and 27 recite "an indicia panel", claims 7 and 20 recite "frame members", claim 8 recites "first zone is inclined", and claim 23 recites "thermal breakers". The aforementioned limitations in combination with remaining limitations of the claims are believed to render the subject matter of claims 5, 7, 8, 20, 23, and 27 patentable over the art of record.

### *Response to Arguments*

6. Applicant's arguments presented in the amendment filed on 02/24/03 (paper # 3) are not persuasive.

The Examiner believes that Applicant's statement presented on p. 4, lines 7 and 8 of the amendment that "in view of the amendments made to independent claims 1 and 19, it is believed that the rejection of these dependent claims has been rendered moot..." is incorrect, since no amendments to the aforementioned claims 1 and 19 have been made.

Also, the Applicant has concentrated the arguments exclusively around the Tonaka ('070) reference and did not take in the account that Applicant's disclosed Prior Art has been used as a primary reference in the rejection of claims 1-4, 6, 19, 21, 22, and 24-26.

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In conclusion, the Applicant did not address the alternative rejection of the claims in view of *In re Japikse*, 86 USPQ 70 (p. 3 of the Office Action).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anatoly Vortman whose telephone number is 703-308-7824. The examiner can normally be reached on 9:30-6:00, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Darren Schuberg can be reached on 703-308-4815. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3431 for regular communications and 703-305-3432 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.

Anatoly Vortman  
Primary Examiner  
Art Unit 2835

A.V.  
March 20, 2003

A handwritten signature in black ink, appearing to read "A. Vortman", followed by a horizontal line.